

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS J. CAPANO,
Petitioner,

v.

THOMAS CARROLL, Warden, *et al.*,
Respondent.

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: Civil Action No. 06-58 ***
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MOTION TO AMEND SCHEDULING ORDER

The Petitioner hereby moves the Court to amend the Scheduling Order, dated December 13, 2006 (Document 20) in the following respects:

Paragraph 1 of the Scheduling Order be amended to provide that the Petitioner's Opening Brief and Appendix be filed on or before February 20, 2007 and that the deadlines in Paragraphs 2 and 3 be adjusted accordingly.

A proposed Amended Scheduling Order is attached hereto.

In support of this Motion, it is represented as follows:

(1) This case involves the review of the Petitioner's conviction for First Degree Murder following a trial which lasted over three months. The issues raised in the Habeas Corpus Petition involve the review of the decision in Petitioner's direct appeal, which is reported as *Capano v. State*, 781 A.2d 556 (Del. 2001). Specifically, the issues raised involve a review of Parts IV, V and VI of the court's opinion. See, *Id.*, at 578.

(2) The Petitioner's Opening Brief is now approximately 70% completed, but additional time is needed to complete the Brief and for review and editing.

This Motion is not opposed by the State.

/s/ Joseph M. Bernstein
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AMENDED SCHEDULING ORDER

AND NOW, this ____ day of _____, 2007, IT IS ORDERED as follows:

1. Petitioner shall file an Opening Brief and Appendix in support of the claims raised in the Habeas Corpus Petition on or before February 20, 2007.
 2. The Respondents may file, but shall not be required to file, an Answering Brief. If the Respondents elect to file an Answering Brief, such Brief shall be filed on or before April 16, 2007.
 3. If an Answering Brief is filed by Respondents, the Petitioner may file a Reply Brief on or before April 30, 2007.
 4. Oral argument may be scheduled at the discretion of the Court.
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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2007, I electronically filed the foregoing Motion to Amend Scheduling Order with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Elizabeth R. McFarlan, Esquire
Department of Justice
820 N. French Street
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/ s/ Joseph M. Bernstein
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